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Report of the Special Rapporteur in the field of cultural rights on her mission to Serbia and Kosovo: comments by the State*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Special Rapporteur in the field of cultural rights, Karima Bennoune, on her mission to Serbia and Kosovo.

* Reproduced as received

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Comments by the government of the Republic of Serbia concerning the report of the Special Rapporteur in the field of cultural rights

Protection of cultural heritage, in particular its human rights dimension, which includes, but is not limited to, free and unhindered access to and enjoyment of cultural heritage is of paramount importance for all individuals and communities living in Serbia. Being a culturally diverse country with significant cultural patrimony, the Republic of Serbia has always advocated the respect and universality of cultural rights. The Republic of Serbia is one of the co-sponsors and members of the core group of countries behind the Human Rights Council Resolution on Cultural Rights and Protection of Cultural Heritage and has been among the first countries visited by the Special Rapporteur in the field of cultural rights.

The Republic of Serbia supports the mandate of the Special Rapporteur in the field of cultural rights, established by the United Nations Human Rights Council. Based on the mandate and upon an invitation extended by the Government, Special Rapporteur carried out her mission to Serbia from 3 to 14 October 2016. Having carefully studied the report prepared by Special Rapporteur, the Government of the Republic of Serbia would like to highlight the points given below.

General remarks

Special Procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country specific perspective; also, Special Procedures are a core element of the United Nations human rights mechanism. Resolutions by which their mandates are created or extended, as well as their activities and reports of visits by mandate holders are on the agenda of the UN Human Rights Council and of the UN General Assembly. Therefore, it is expected that Special Rapporteur respects the UN Charter and complies with all binding resolutions of the UN Security Council - in this particular case the UN Security Council Resolution 1244 (1999), which was adopted on the basis of Chapter VII of the UN Charter. Consequently, this implies the obligation for all UN mandate holders to uphold and respect the status neutral position of the Secretary General of the United Nations with respect to sovereignty and territorial integrity of the Republic of Serbia. It should also be noted that the Special Rapporteur is, in the performance of his/her mandate, obliged to abide by the Resolution on establishing the Independent expert in the field of cultural rights (A/HRC/RES/10/23) and Resolution on Code of conduct for Special Procedures Mandate – holders of the Human Rights Council (A/HRC/RES/5/2).

According to the UN Security Council Resolution 1244 (1999), the Autonomous Province of Kosovo is an integral part of the territory of the Republic of Serbia with substantial autonomy. The administration of the Province is entrusted to the United Nations Interim Administration Mission in Kosovo and all international duty bearers are obliged to abide by the principles set forth in the abovementioned Resolution.

The Report presented, unfortunately, does not comply with the status-neutral position of the UN. With repeated references to "Serbia and Kosovo" throughout the entire report, invocation of unilateral political acts by the so called "Kosovo Assembly", the Ahtisaari Plan, which was not endorsed by the UN Security Council, etc, it indirectly implies and reaffirms the self-proclaimed statehood of "Kosovo", which is illegal and contrary to the principles of international law. Furthermore, the paragraphs of the report related to the situation of cultural rights in Kosovo are overwhelmingly politicized, with inappropriate quotations, and in some parts grossly understate the extent of mass destruction of Serbian cultural heritage after 24 June 1999, including during mass rioting of March 2004, for which no one as yet has been held accountable.

Specific comments are made by Government of the Republic of Serbia on following paragraphs:

I. Introduction

- **Paragraph 7** – Special Rapporteur places Serbia and Kosovo as equal actors in the context of breakup of the former Yugoslavia, which is legally and factually erroneous and misleading. Serbia was one of the six constituent republics of Socialist Federative Republic of Yugoslavia, while Kosovo and Metohija was not, itself being part and parcel of the territory of the Socialist Republic of Serbia. The Special Rapporteur fails to give an account of the circumstances and consequences of the bombing campaign of 1999 on the destruction of Serbian cultural heritage and disregard of cultural rights.

III. Serbia: Enjoyment of the Right to Take Part in Cultural Life

B. General Context

–**Paragraph 20** –The statement reading: "*Some 203,000 internally displaced persons were present in Serbia at the time of the mission*" is inaccurate and does not paint the full picture. During the wars of the 1990's, Serbia admitted 617,728 refugees from the territory of the former Yugoslavia, including nationalities other than Serb[1] At the time of the mission of the Special Rapporteur, around 30,000 refugees from the territory of the former Yugoslavia and 203,000 IDP's from Kosovo and Metohija were present in Serbia.

A. Specific Issues of Concern

2. Inclusion and Non-discrimination in the Field of Cultural Rights

–**Paragraph 28** – In connection with the allegations concerning the need for the creation of Roma cultural institutions, it should be pointed out that the Action Plan for the Implementation of the Strategy of Social Inclusion of the Roma for the Period 2015-2025, under specific target 2: Housing or, more precisely, Operational Goal 8: Raise the cultural standard of the Roma population, economic empowerment and preservation of the ethno-cultural identity, proposes the following activities: establishing Roma cultural centres, and/or improving the capacities of existing institutions in larger sustainable settlements or in local communities with at least 300 Roma inhabitants. In other words, it can be concluded that the need to institutionalize Roma culture has been recognized and that it has been dealt with. As for the alleged lack of representation of Roma on the administrative board of Radio-TV Serbia, it should be underscored that the Administrative Board is appointed by the *Regulatory Authority for Electronic Media* and selected through a public competition. The competition for the members of the Administrative Board is open for all without discrimination.

–**Paragraph 34** – The case of DAH theatre has not been appropriately presented. Namely, the site in question is not within the jurisdiction of the Ministry of Culture and Information but is, instead, regulated through common contractual and business relations between the owner of the property (lessor) and the lessee. Furthermore, the problem that DAH theatre had been facing was resolved in the meantime, and it is now operating on the premises of artistic association Abrasevic in Belgrade. In addition, it should be emphasized that there is an almost full continuity as to support extended to the projects of the DAH theatre in public notices announced by the Ministry of Culture and Information.

–**Paragraphs 45 and 46** – References to the "Declaration of Independence adopted by the Assembly of Kosovo" and the "Kosovo Constitution" are inappropriate because of the mandate of the Special Rapporteur as an UN official. From the aspect of international law

[1] According to the UNHCR survey "Census of Refugees and Other War Affected Persons in the Federal Republic of Yugoslavia", published in 1996.
http:www.kirs.gov.rs/docs/izvestaji/Popis%20izbeglica%20i%20drugih%20ratom%20ugrozenih%20lica%20u%20SRJ%201996.pdf.

and United Nations principles, Kosovo and Metohija is an integral part of the territory of Serbia, placed under international administration on the basis of UN Security Council Resolution 1244 (1999). The "Declaration of Independence" by Kosovo Assembly is a unilateral political act (statement) which cannot have legal effect or be implemented in international human rights law. The only legal grounds valid for implementing international human rights treaties in Kosovo and Metohija are instruments of ratification deposited by the Republic of Serbia. An additional basis for the implementation of international human rights standards in Kosovo is the UN Security Council Resolution 1244 (1999), which includes the protection and promotion of human rights amongst the major responsibilities of the international civil presence in Kosovo and Metohija, paragraph 11(j).

-**Paragraph 46** – Since the International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by Serbia in 2001, there is no point establishing any link between the "Kosovo Constitution" and SFRY treaty obligations. The International Covenant on Economic, Social and Cultural Rights is a legally binding instrument on its States Parties, in accordance with the stipulated conditions and international law. Autonomous Province of Kosovo and Metohija is not a State Party to the said Covenant. The implementation of ICESCR by the Kosovo authorities should be based on the UNMIK directive and the fact that the Republic of Serbia is a State Party to this Covenant, the same as its legal predecessors. This was confirmed by the position of the Human Rights Committee contained in General Comment 26 of 1997, relating to the right of a State Party to withdraw from the International Covenant on Civil and Political Rights (ICCPR).

- **Paragraph 49** - Any reference to the Ahtisaari Plan is unacceptable, particularly in view of the fact that the Ahtisaari Plan was not endorsed by the UN Security Council.

- **Paragraph 55** – The sentence "*This sometimes results in youth having to use military transport to travel to school and to do so over long distances…*" should end with: "…., *due to lack of security*".

V. The Right to Access and Enjoy Cultural Heritage in Serbia, and in Kosovo

A. General Issues

The legacy and impact of destructions

Paragraph 71 – Concerning the "*35 listed Orthodox monuments and churches*" it is important to note that the figure is much higher and that it should be brought in line with official figures. Only in the past ten years some 150 churches, monasteries and other cultural heritage sites were destroyed, damaged or desecrated – out of which 61 enjoy cultural monument status, while 18 of them are of exceptional importance to the Serbian state. At the same time, more than 10,000 icons, church art and service objects were destroyed or stolen, and are now sold on the illegal market across the world. Additionally, 5,261 tombstones were devastated or damaged at 256 Serbian Orthodox cemeteries, while at more than 50 cemeteries not a single tombstone has been left intact; even bones were dug out of graves and dispersed all over. Desecration and devastation have not ended yet. Cemeteries have been turned into dumps and made inaccessible, overgrown with weeds and spruce. Furthermore, unprecedented attempts at renaming the Serbian cultural identity in Kosovo and Metohija are ongoing. Not a single perpetrator of all these crimes has been identified nor held accountable. At the beginning of the 21st century, we are faced with the threat of disappearance of a unique multicultural and multiethnic region. It is important to underscore that it is an inalienable right of each and every country "to preserve with full sovereignty its indigenous cultural values that are the fruits of its entire history" (1976 UN Vancouver Declaration). Serbia has been deprived of this right in Kosovo and Metohija. (http://kim.gov.rs/kulturno-nasledje.php)

Mosques in Nis and Belgrade have been reconstructed. Ministry of Culture and Information does not have reliable data about the alleged "*devastation of two Ottoman-era tombstones in Belgrade's Citadel Museum, the last by a curator*", referred to in the Report. However,

regarding the care for Ottoman-era monuments, it is important to underline that in Belgrade alone, the implementation of the Project of reconstruction, conservation and presentation has been completed, in cooperation with the Turkish Agency for Reconstruction (TIKA), as well as the reconstruction, conservation and presentation of Sheikh Ali Mustafa's Türbe, Damad Ali Pasha's Türbe and the Fountain of Mehmed Pasha Sokolovic.

-Paragraphs 76 and 77 - As regards the site of "Staro sajmiste" (Old Fairground), where a concentration camp was located during World War II, we wish to point out that in the immediate post-war period several buildings were built on the site, to accommodate workers and brigadiers of youth work drives, and those buildings are still in existence. The damaged Belgrade Fair buildings were torn down, due to which only several buildings remain to this day. Current tenants' structure includes a few artists' pavilions, as well refugees and the Roma.

Old Fairground was declared a memorial site under the 1988/1989 City Master Plan, and subsequently designated as cultural heritage. A monument was erected in the centre of the Old Fairground area, with a memorial plaque engraved with a camp-related text. Close by lies a memorial devoted to camp victims and other victims of fascism.

Thus, it would be relevant to add that the Government of the Republic of Serbia and the Belgrade City Assembly have undertaken appropriate measures, all the more so since preparations are underway for refurbishing the Central Tower as part of the future Old Fairground memorial. Additionally, a draft law on the memorial centre is in its final stages. This draft law stipulates the establishment of a museum with a wide range of activities, including settlement of property relations with the previous owners of buildings and lots, elaboration of memorial projects, from reconstruction and refurbishment of devastated buildings to programme activities.

- Paragraph 79 - which reads: " *Beyond the borders of Serbia itself, it is critical for Serbia to come to terms with the recent history of its authorities' role ...in the vast destruction of cultural heritage of other parts of the Former Yugoslavia during the conflicts of the 1990s, including in Bosnia, Croatia and Kosovo, a pattern of cultural destruction about which experts have determined that when taken together, there can be no doubt as to the systematic tactics being employed*", is not founded nor substantiated through the facts and judgments of the International Criminal Tribunal for the Former Yugoslavia (ICTY). The comment and selection of quotations under this paragraph go beyond the subject-matter of the visit. In our view, the Report should assess specific developments in the field of cultural rights in the territory of the Republic of Serbia, including Kosovo and Metohija and recommend specific measures aimed at their protection, and not attempt to justify the continued practice of infringement of cultural rights, predominantly those of Serbs and other non-Albanian population in Kosovo and Metohija, and appropriation of their heritage by introducing one sided assertions and speculations concerning the conflict of the 1990's when, in fact, all parties to the conflict devastated the cultural heritage of one another.

C. Cultural heritage in Kosovo

-Paragraph 80 - The allegation of massive destruction of cultural heritage in Kosovo and Metohija during the 1998-1999 conflict and in its aftermath and crimes aimed at "cultural cleansing" is arbitrary and unsubstantiated, fraught with prejudice.

Data on the number of destroyed religious sites of Islamic and Orthodox communities, contained in the study "The destruction of cultural heritage in Kosovo 1998-1999" by Andrew Herscher and Andras Riedlimayery, published by "Kosovo Cultural Heritage Project – Cambridge Massachusetts, USA" are taken out of context and suggest disproportionate destruction of monuments of the Islamic community, ignoring the information on the total number of cultural monuments of other communities and the fact that the monuments of the Serb Orthodox community dating back to the Middle Ages have been destroyed, some of which were under UNESCO protection. The fact that four Serbian monasteries in Kosovo and Metohija have been inscribed on the UNESCO List of World Heritage in Danger since 2006 and that in the March 2004 rioting, Serbian monuments were destroyed or vandalized proves that their universal value and relevance to mankind have

been jeopardized. There are 1,300 Orthodox churches, monasteries and other religious sites in Kosovo and Metohija which constitute cultural heritage of the Serb people; between 10 June 1999 and March 2004, as many as 110 Orthodox churches were destroyed; in coordinated attacks on 17 and 18 March 2004, additional 34 churches and heritage sites were destroyed, some of which date back to the 12th and 14th centuries; entire Orthodox cemeteries were razed and tombstones were vandalized. The situation regarding Orthodox cemeteries became so alarming that the OSCE Mission in Kosovo and Metohija prepared a report "Maintenance of Orthodox graveyards in Kosovo".

-Paragraph 88 - The assessment of the Special Rapporteur that "*it seems that there is no longer need for heavy escorts*" should be reconsidered, as personal safety of Serbs in Kosovo and Metohija still remains an issue of serious concern.

-Paragraph 100 (m) - Invoking the Ahtisaari Plan should be omitted, as it has never been adopted by the UN Security Council. Thus, the wording should have been rephrased to read, "*... to reactivate mechanisms for cooperation on reconstruction of damaged cultural heritage in Kosovo*".